

रजिस्ट्रें नं० पी०/एस ० एम० १४.



# राजपत्र, हिमाचल प्रदेश (असाधारण)

हिमाचल प्रदेश राज्यशासन द्वारा प्रकाशित

शिमला, शनिवार, २८ मार्च, १९८७/७ चैत्र, १९०९

HIMACHAL PRADESH VIDHAN SABHA SECRETARIAT

NOTIFICATION

*Shimla-171004, the 25th March, 1987*

No. 1-10/87-VS.—In pursuance to rule 135 of the Rules of Procedure and Conduct of Business of the Himachal Pradesh Legislative Assembly, 1973, the Himachal Pradesh Panchayati

६३९-राजपत्र/८७-२८-३-८७—१,२०२.

(५७५)

मूल्य : २० पैसे ।

Raj (Amendment) Bill, 1987 (Bill No. 3 of 1987) having been introduced on the 25th March, 1987, in the Himachal Pradesh Vidhan Sabha, is hereby published in Gazette.

V. VERMA,  
*Secretary.*

Bill No. 3 of 1987.

**THE HIMACHAL PRADESH PANCHAYATI RAJ (AMENDMENT)**

**BILL, 1987**

(AS INTRODUCED IN THE LEGISLATIVE ASSEMBLY)

A

**BILL**

*farther to amend the Himachal Pradesh Panchayati Raj Act, 1968 (Act No. 19 of 1970).*

BE it enacted by the Legislative Assembly of Himachal Pradesh in the Thirty-eighth Year of the Republic of India as follows:—

1. (1) This Act may be called the Himachal Pradesh Panchayati Raj (Amendment) Act, 1987.

Short title  
and con-  
menc m n

(2) It shall come into force at once.

2. For the existing section 4 of the Himachal Pradesh Panchayati Raj Act, 1968 (hereinafter called the principal Act) the following section 4 shall be substituted, namely:—

Substitu-  
of s c n

“4. (1) The Government may, by notification or otherwise, declare any village or group of contiguous villages with a population of not less than one thousand and not more than five thousand to constitute one or more Sabha areas:

Provided that neither the whole nor any part of an area comprised in a municipal corporation, a municipal committee, a notified area committee or a cantonment board shall be included in a Sabha area:

Provided further that the Government may, in any particular case, relax these limits.

(2) The Government may, by notification or otherwise, include any area in, or exclude any area from, the Sabha area.

(3) If the whole of the Sabha area is included in a municipal corporation, a municipal committee, a notified area committee or a cantonment board, the Sabha shall cease to exist and its assets and liabilities shall be disposed of in the manner prescribed.”

3. Notwithstanding anything contained in section 2 of this Act, such Sabha areas which were constituted under the principal Act and were in existence immediately before the commencement of this Act shall continue to be validly constituted till these Sabha areas are reconstituted, within a period of three years from the commencement of this Act, by the State Government in accordance with the provisions of sub-section (1) of section 4 of the principal Act as amended by section 2 of this Act.

Continuance  
of certain  
Gram  
Sabhas.

Amendment  
of section 9.

4. In clause (h) of sub-section (5) of section 9 of the principal Act, for the words, brackets and figure "the Punjab Habitual Offenders (Control and Reforms) Act, 1952 as in force in the transferred territory", the words, brackets and figure "the Himachal Pradesh Habitual Offenders Act, 1969 (Act No. of 8 of 1970)" shall be substituted.

Substitution  
of section  
10.

5. For the existing section 10 of the principal Act, the following new section 10 shall be substituted, namely:—

"10. (1) Before entering upon the duties of their office, the Panches shall take an oath in the form specified in Schedule I.

(2) The Pradhan, Up-Pradhan and Panches shall hold office for a period of five years unless any one of them ceases to be as such on account of removal or resignation earlier:

Provided that wherever it is expedient to do so in public interest, the said period of 5 years may be extended by the State Government by a period not exceeding six months at a time, but not beyond a total period of two years:

Provided further that an outgoing Panch shall, unless the Government otherwise directs, continue to hold his office until the election of his successor is notified:

Provided further that the Government may, for holding the elections to the Gram Panchayats simultaneously throughout the State, order, by notification in the Official Gazette, general elections to the Gram Panchayats before the expiry of their prescribed term.

(3) The Gram Sabha may remove the Pradhan or Up-Pradhan from his office by a majority of two-thirds of the members of Gram Sabha present and voting at its general meeting and the quorum of such meeting shall be two-thirds of the total number of its members:

Provided that such vote of no-confidence shall not be maintainable within one year of the date of his or her election to such office and any subsequent vote of no-confidence shall not be maintainable within the interval of one year of the last motion of no-confidence.

(4) Every Panch or servant of a Gram Panchayat, constituted under this Act, shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code."

Substitution  
of section  
14.

6. For section 14 of the principal Act, the following section 14, along with its heading, shall be substituted, namely:—

"14. Maintenance of panchayat records etc.—The Secretary of the Gram Panchayat, under the overall supervision of the Pradhan, and in his absence under the supervision of the Up-Pradhan, shall be responsible for the custody and maintenance of all prescribed records and registers and other property belonging to or vested in the Gram Sabha or the Gram Panchayat."

7. For the existing section 15 of the principal Act, the following section 15 shall be substituted, namely:—

Substitution  
of section  
15.

“15. (1) There shall be a Secretary for a Gram Panchayat or a group of Gram Panchayats who shall be appointed by the Director:

Provided that any person appointed as a Secretary of any Gram Panchayat or a group of Gram Panchayats before the commencement of this Act shall be deemed to have been appointed by the Director.

- (2) The remuneration, allowances and other matters relating to the service conditions of Panchayat Secretaries shall be such as may be determined by the Government from time to time.
- (3) It shall be the duty of the Secretary to assist the Pradhan or the Up-Pradhan of the Gram Panchayat, as the case may be, in the discharge of their functions under this Act or under any other law for the time being in force.”

8. In sub-section (1) of section 54 of the principal Act, for the words “order him to hand over the records, money or any property of such body to the persons authorised in this behalf”, the words “in case he is in possession of any records, money or any property of such body, order him to hand over such records, money or property to the Panchayat Secretary” shall be substituted.

Amendment  
of section  
54.

9. For the existing section 63 of the principal Act, the following section 63 shall be, substituted, namely:—

Substitution  
of section  
63.

“63. The Panchayat Samiti shall consist of the following members:—

- (a) primary members—all Pradhans of Gram Panchayats in the Block;
- (b) co-opted members—to be co-opted in accordance with the provisions of section 74, comprising—

- (i) two women out of Panches from the Block, if no woman is a primary member under clause (a); provided that if only one woman is a primary member, one more woman shall be co-opted;

- (ii) four persons out of Panches from the Block belonging to Scheduled Castes, if no such person is a primary member under clause (a); provided that if only one, two or three persons belonging to Scheduled Castes become primary members under clause (a), then three, two or one such person, as the case may be, shall be co-opted;

- (c) associate member—every elected member of the Himachal Pradesh Legislative Assembly representing the constituency of which the Block as a whole or any part thereof forms part, shall be an associate member;

- (d) ex-officio member—the Sub-Divisional Officer having jurisdiction in the Block shall be an ex-officio member :

Provided that an associate member or ex-officio member shall not be entitled to vote at, but shall have the right to speak in and otherwise

take part in the proceedings of any meeting of the Panchayat Samiti or its committees."

Amendment  
of section  
64.

10. In section 64 of the principal Act—

- (a) for the words "for election as", the words "to be a" shall be substituted;
- (b) in clause (j) after the words "membership of", the words and sign "Municipal Corporation," shall be inserted; and
- (c) for clause (k) the following clause shall be substituted, namely:—  
"(k) is otherwise disqualified for being a member; or".

Substitution  
of section  
66.

11. For the existing section 66 of the principal Act, the following section 66 shall be substituted, namely:—

"66. **Term of office of members.**—Subject to the provisions of this Act, the term of office of primary or co-opted members, other than a member co-opted to fill a casual vacancy, shall be five years;

Provided that wherever it is expedient to do so in public interest, the said period of five years may be extended by the State Government by a period not exceeding six months at a time, but not beyond a total period of two years."

Substitution  
of section  
68.

12. For the existing section 68 of the principal Act, the following new section 68 shall be substituted, namely:—

"68. (1) The names of the primary and co-opted members and of the elected Chairman or Vice-Chairman of a Panchayat Samiti shall be notified by the Deputy Commissioner concerned in the Official Gazette and no such member, Chairman or Vice-Chairman shall enter upon his duties until his name has been so notified.

(2) Notwithstanding anything contained in the Indian Oaths Act, 1873 no member, other than an associate or an *ex-officio* member, and the Chairman or the Vice-Chairman of the Panchayat Samiti shall enter upon his office, until he has, in the manner prescribed, taken oath or made affirmation of his allegiance in the form specified in Schedule I as a member or as the Chairman or Vice-Chairman, as the case may be. 10 of 1

(3) If any such person refuses to take or make such oath or affirmation, except on account of such disability for which permission of the Deputy Commissioner is obtained, his co-option or election, as the case may be, shall be deemed to be invalid and a fresh co-option or election shall take place.

(4) No person whose co-option or election has been deemed to be invalid under this section shall be eligible for co-option as a member or for election as the Chairman or Vice-Chairman of any Panchayat Samiti for a period of two years from the date on which he ought to have taken or made such oath or affirmation."

Substitution  
of section  
69.

13. For the existing section 69 of the principal Act, the following section 69 shall be substituted, namely:—

"69. (1) A co-opted member may resign his office by notifying in writing his intention to do so to the Chairman of the Panchayat Samiti:

Provided that where the notice of the resignation is not delivered personally to the Chairman, the Chairman shall obtain confirmation from the person concerned as to its genuineness.

- (2) A resignation confirmed as aforesaid or delivered personally shall take effect on and from the date on which the notice was received."

14. For section 70 of the principal Act, the following section 70 shall be substituted, namely:—

Amendment  
of section  
70.

"70. (1) When the office of a member becomes vacant by resignation, death or otherwise, the said office shall be filled up in the manner provided in section 63.

- (2) A person who fills a casual vacancy, under sub-section (1), shall hold office for the un-expired period of the term of the person in whose place he becomes a member."

15. Sections 71 and 72 of the principal Act shall be omitted.

Omission of  
sections 71  
and 72.

16. For clause (c) of sub-section (1) of section 73 of the principal Act, the following clause (c) shall be substituted, namely:—

Amendment  
of section  
73.

"(c) he ceases to be a Panch in case of a co-opted member and a Pradhan in case of a primary member."

17. For section 74 of the principal Act the following section 74 shall be substituted, namely:—

Substitution  
of section  
74.

"74. (1) The Deputy Commissioner concerned, or any Gazetted Officer appointed by him in this behalf, shall, as soon as possible after the oath is taken under section 10 by the Pradhans, the Up-Pradhans and the Panches in the Block, call under his presidency a meeting of all the primary members in the manner prescribed for the purpose of oath or affirmation of allegiance as provided under section 68 and for co-opting members in the prescribed manner under clause (b) of section 63.

- (2) The primary members and co-opted members of a Panchayat Samiti shall, in the prescribed manner, elect one of its members to be the Chairman and another member to be the Vice-Chairman of the Panchayat Samiti.

- (3) The election under sub-section (2) shall, during the term of each Panchayat Samiti, be held by secret ballot twice, firstly in its meeting convened under sub-section (1) and secondly within a period of one month of the expiry of a period of two and a half years of the date in which the election is notified under sub-section (1) of section 68."

18. For section 75 of the principal Act, the following section 75 shall be substituted, namely:—

Substitution  
of section  
75.

"75. (1) The term of office of the Chairman and of the Vice-Chairman of a Panchayat Samiti elected in a meeting referred to in sub-section (3) of section 74 shall be two and a half years:

Provided that if the Government, under section 10, order general elections to Gram Panchayats before the expiry of their prescribed term, the Chairman or Vice-Chairman shall also cease to hold office :

Provided further that an outgoing Chairman or Vice-Chairman shall, unless the Government otherwise directs, continue to hold office until the election of his successor is notified:

Provided further that the Chairman or Vice-Chairman shall cease to be the Chairman or Vice-Chairman if he ceases to be a member of a Panchayat Samiti or if, by a resolution passed by a majority vote, the Panchayat Samiti decides at a meeting convened in the manner prescribed that he shall vacate his office ; in such a case Panchayat Samiti shall elect a new Chairman or Vice-Chairman, as the case may be, in the same manner as prescribed under section 74:

Provided further that such vote of no-confidence shall not be maintainable within one year of the date of his or her election to such office and any subsequent vote of no-confidence shall not be maintainable within the interval of one year of the last motion of no-confidence:

Provided further that the person so elected either under this section or under section 76 or under section 77 shall hold office for the unexpired term of the person in whose place he is elected as the Chairman or the Vice-Chairman, as the case may be.

(2) An outgoing Chairman or Vice-Chairman shall be re-eligible for election if otherwise qualified."

Amendment of section 79. 19. In section 79 of the principal Act, for the word "six times", the words "four times", and for the words "two months", the words "three months" shall be substituted.

Amendment of section 114. 20. For clause (c) of sub-section (1) of section 114 of the principal Act, the following clause (c) shall be substituted, namely:—

"(c) standing committee for education, social welfare, public health and sanitation (including rural water supply), cottage industries, co-operatives and housing; and for programmes, e.g. integrated rural development programme, national rural employment programme and rural landless employment guarantee programme."

Amendment of section 39. 21. In sub-section (3) of section 139 of the principal Act—

(i) for clause (a), the following clause (a) shall be substituted namely:—

"(a) two representatives of every such Panchayat Samiti, which comprises of more than 40 Gram Panchayats and one representative of every such Panchayat Samiti, which comprises of 40 or less than 40 Gram Panchayats, to be elected in the manner prescribed by a secret ballot by the Panchayat Samiti; and



(ii) for clause (d), the following clause (d) shall be substituted, namely:—

“(d) every member of the Rajya Sabha who is recorded as a voter in the voters’ list of that district for the Himachal Pradesh Legislative Assembly.”

22. In sub-section (1) of section 142 of the principal Act,—

Amendment  
of section  
142.

- (a) in the existing first proviso, for the words “Provided that”, the words “Provided further that” shall be substituted; and
- (b) before the proviso so amended, the following proviso shall be inserted, namely:—

“Provided that wherever expedient to do so in public interest the said period of five years may be extended by the State Government by a period not exceeding six months at a time, but not beyond a total period of two years.”

23. For the existing section 187 of the principal Act, the following section 187 shall be substituted, namely:—

Substitution  
of section  
187.

“187. (1) Any person who is a voter for the election of a member, Chairman and Vice-Chairman of a Zila Parishad or for the election of the Vice-Chairman or Chairman of a Panchayat Samiti may, on furnishing the prescribed security and on such other conditions, as may be prescribed, within twenty days of the date of announcement of the result of an election, present to the prescribed authority, an election petition in writing, against the election of any person as a member, Vice-Chairman or Chairman of the Zila Parishad or as the Vice-Chairman or Chairman of the Panchayat Samiti concerned.

(2) The prescribed authority may—

- (a) if it finds, after such enquiry as it may deem necessary, that failure of justice has occurred, set aside the said election and a fresh election shall thereupon be held;
  - (b) if it finds that the petition is false, frivolous, or vexatious, dismiss the petition and order the security to be forfeited to the Panchayat Samiti or Zila Parishad concerned, as the case may be.
- (3) Except as provided in this chapter, the election of a member, the Vice-Chairman or the Chairman of a Zila Parishad or the Vice-Chairman or the Chairman of a Panchayat Samiti or a Pradhan or an Up-Pradhan of a Gram Panchayat shall not be called in question before any authority or in any court of law.”

24. For the sign “.” occurring at the end of section 193 of the principal Act, the sign “:” shall be substituted and thereafter the following proviso shall be added, namely:—

Amendment  
of section  
193.

“Provided that if the office of the Chairman becomes vacant by reason of his resignation, death, recall or removal, the Vice-Chairman shall be paid, during the period the office of the Chairman

remains vacant, honorarium and other allowances for discharging the duties and functions of the Chairman."

Insertion of  
section 206-A.

25. After section 206 of the principal Act, the following new section 206-A shall be inserted, namely:—

**"206-A. Application for transfer of cases from one Gram Panchayat to another Gram Panchayat.—**(1) Notwithstanding anything to the contrary contained in this chapter, if in any criminal case or civil or revenue suit before a Gram Panchayat any party intimates, at any stage before the pronouncement of the final order or decree, that it intends to put up an application under this section to the Judicial Magistrate or the Sub-Judge or the Collector, as the case may be, for transfer of the case or suit, the Gram Panchayat shall direct the applicant to make such application within a reasonable time to be fixed by the Gram Panchayat, which shall not be less than fifteen days and adjourn the case or suit for such period as will afford sufficient time for the application to be put up and an order to be obtained thereon:

Provided that nothing herein contained shall require the Gram Panchayat to adjourn the case or suit upon a second or subsequent intimation from the same party.

- (2) The Judicial Magistrate or the Sub-Judge or the Collector, as the case may be, may, upon such application, for reasons to be recorded in writing, transfer the case or suit to another Gram Panchayat within his jurisdiction which shall try or hear the case or suit, as the case may be.

## STATEMENT OF OBJECTS AND REASONS

Increase in population demands that the existing limit of population to constitute a Gram Sabha should be revised to make it a viable unit. With this end in view, the existing minimum population limit is being raised from 500 to 1,000.

2. To strengthen democracy at the grass roots, it is necessary that elections to the Panchayati Raj institutions are held regularly. Whenever postponement of elections becomes necessary due to some administrative or other exigencies, the elections should not be delayed beyond six months at a time and for not more than a total period of two years under any circumstance.

3. Under the existing provisions of sections 10 of the Himachal Pradesh Panchayati Raj Act, 1968 (Act No. 19 of 1970) an outgoing Panch continues to hold office until his successor takes oath. It means double membership till the oath is administered to the newly elected Panches. To remove this anomaly, it has been decided that as in the case of members of Panchayat Samitis and Zila Parishads a Panch of a Gram Panchayat should also continue to function till the election of his successor is notified.

4. It is felt that the Panchayat Secretaries, who are trained in and paid for the job by the Government, should be made responsible for maintaining and keeping Panchayat records in safe custody. Their appointment is also proposed to be made by the Director of Panchayati Raj.

5. With a view to securing close co-ordination in relation to developmental activities amongst the Gram Panchayats on the one hand and the Panchayat Samitis on the other hand and to ensure more effective public participation in the local administration, it is considered necessary to make all Pradhans primary members of the Panchayat Samiti and also to hold elections to the offices of its Chairman and Vice-Chairman twice during its normal term. Further more, the meetings of the Panchayat Samiti are also being reduced from the present six times in a year to four times in a year in order to reduce the financial burden on the Panchayat Samiti and also because holding bi-monthly meetings will be too short a period to monitor the activities of the Samiti.

6. To give more representation to those Panchayat Samitis in the Zila Parishads which have more than forty Gram Panchayats in their jurisdiction, a provision for two representatives is proposed to be made.

7. It is also felt necessary that when the office of the Chairman of a Panchayat Samiti or of a Zila Parishad falls vacant and the duties and functions of the Chairman are discharged by the Vice-Chairman, he may also be paid a reasonable honorarium as is being paid to the Chairman.

8. Besides, to prevent abuse of power by any Gram Panchayat or otherwise to meet the ends of justice, it is also desirable that provisions be made for transfer of cases from one Gram Panchayat to another.

All this has necessitated amendments in the Himachal Pradesh Panchayati Raj Act, 1968 (Act No. 19 of 1970).

This Bill seeks to achieve the aforesaid objectives.

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FINANCIAL MEMORANDUM

Clauses 9 and 21 of the Bill seek to provide for increase of the members of the Panchayat Samitis and Zila Parishads in the State. The provisions of the Bill when enacted will involve an extra non-recurring expenditure to the tune of Rs. 1,25,000 and recurring expenditure to the tune of Rs. 45,000 per annum out of the State exchequer.

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MEMORANDUM REGARDING DELEGATED LEGISLATION

Nil

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RECOMMENDATIONS OF THE GOVERNOR UNDER ARTICLE 207 OF THE  
CONSTITUTION OF INDIA

[Panchayat Department File No. PCH-HA (3) 5/76-IV]

The Governor of Himachal Pradesh, after having been informed of the subject matter of the Himachal Pradesh Panchayati Raj (Amendment) Bill, 1987, recommends, under Article 207 of the Constitution of India, the introduction and consideration of the said Bill in the Legislative Assembly.